IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 102 of 2007 (S/B)

Inam Ali S/o Sri Amir Ahmad, Secretary,
Muslim Education Mission (MEM) /
Principal, Government Ashram Type School,
Haripur Kalsi, Dehradun. ..... Petitioner

Versus

1. State of Uttarakhand,
through Principal Secretary-cum-Commissioner,
Social Welfare Department
(Forest & Rural Development Branch),
Dehradun, Uttarakhand.
2. Secretary, Social Welfare Department,
Dehradun.
3. Director, Social Welfare Department,
Uttarakhand, Haldwani,
District Nainital.
4. Sri N.K. Sharma, District Social Welfare Officer,
Dehradun,
Secretary, Muslim Education Mission (MEM),
Dehradun. ..... Responents

Mr. A.U. Siddiqui and Mr. B.S. Khanka, Advocates for the petitioner.
Mr. Subhash Upadhyaya, Brief Holder for respondents Nos. 1 to 3.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. A.U. Siddiqui and Mr. B.S. Khanka, Advocates for the petitioner.

Mr. Subhash Upadhyay, Brief Holder for respondents Nos. 1 to 3.

They are heard on admission.

2. Petitioner Inam Ali has filed this writ petition for the following reliefs:

"I. Issue a writ order or direction in the nature of certiorari to quash the impugned transfer order dated

4th July, 2006 passed by the respondent (Annexure No. 3 to this writ petition) & the respondent no. 4 issued an office order no. 31/803/U.M.E.M./07 dated nil stating that he has taken over the extra-charge of the post of Secretary, MEM on 7.5.2007. (Annexure No. 11 to this writ petition).

II. Issue a writ order or direction in the nature of mandamus commanding and directing the respondent to continue as secretary of Muslim Education Mission and pay the salary of the secretary.

III. Issue any other writ order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

IV. Award the cost of petition."

3. The petitioner, in substance, is challenging the impugned order dated 04.07.2006, whereby he stands transferred from his present place of posting Dehradun to Joshimath (District Chamoli) and the consequential order dated 07.05.2007, whereby the petitioner stands relieved.

4. The Apex Court, while considering the scope of interference in the matter of the transfer of a Government Servant in the case of **Major General J.K. Bansal Vs. Union of India and others** reported in **(2005) 7 SCC 227,** observed in paras 9 to 11:

"9. In Shilpi Bose v. State of Bihar the appellants, who were lady teachers in primary schools, were transferred on their requests to places where their husbands were posted. The contesting respondents, who were displaced by the appellants, challenged the validity of the transfer orders before the High Court by filing a writ petition under Article 226 of the Constitution, which was allowed and the transfer orders were quashed. This Court allowed the appeal and set aside the judgment of the High Court by observing as under:-

> *"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place or the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive*

instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department."

10. In Union of India v. S.L. Abbas the respondent was working at Shillong in the office of the Botanical Survey of India and his wife was also working there in a Central Government office. He was transferred from Shilong to Pauri in the hills of U.P. (now in Uttaranchal). He challenged the transfer order before the Central Administrative Tribunal on medical ground and also on the ground of violation of guidelines contained in the Government of India OM dated 3-4-1986. The Tribunal allowed the petition and quashed the transfer order. In appeal this Court set aside the order of the Tribunal and observed as under:-

> *"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."*

11. Similar view has been taken in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan wherein it has been held that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders, as though they were the Appellate Authorities substituting their own decision for that of the management."

5. On due consideration of the submissions of the learned counsel for the parties and in view of the above-quoted dictum of the Apex Court in the case of Major General J.K. Bansal, we do not find any scope for interference in the matter of the petitioner's transfer from Dehradun to Joshimath.

6. The writ petition, therefore, is liable to be dismissed and is hereby dismissed summarily.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**
07.06.2007 07.06.2007

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